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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 ANTHONY A. BEARD,

11 Plaintiff,

12 v.

13 MICHAEL J. ASTRUE, Commissioner of  
Social Security,

14 Defendant.

Case No. C07-5187 FDB

ORDER AWARDING ATTORNEY  
FEES AND COSTS

15 This matter comes before the Court on Plaintiff's motion for an award of attorney's fees and  
16 costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412. Plaintiff seeks an award of  
17 \$5,550.23 in attorney fees and \$25.77 in expenses. The Defendant has filed a response stating the  
18 Commissioner has no objection to the requested fees, costs, and expenses.

19 The Ninth Circuit has established that the Equal Access to Justice Act (EAJA) applies in  
20 social security cases. Wolverton v. Heckler, 726 F.2d 580 (9<sup>th</sup> Cir. 1984).

21 The EAJA provides in pertinent part:

22 Except as otherwise specifically provided by statute, a court shall award to a  
23 prevailing party other than the United States fees and other expenses ... incurred by  
24 that party in any civil action ... brought by or against the United States in any court  
25 having jurisdiction over than action, unless the court finds that the position of the  
United States was substantially justified or that special circumstances make an award  
unjust.

1 A party can be found to prevail when there is a “material alteration of the legal relationships  
2 of the parties,” and the material alteration is “judicially sanctioned.” Carbonell v. INS, 429 F.3d  
3 894, 898 (9<sup>th</sup> Cir. 2005). A material alteration of the legal relationships of the parties occurs when  
4 one of the parties is required to do something directly benefitting the other party that they would not  
5 otherwise have had to do. Id. at 900. A party need not succeed on every claim in order to prevail.  
6 Rather, a plaintiff prevails if he has succeeded on any significant issue in litigation which achieved  
7 some of the benefit sought in bringing suit. Id., nt. 5. A litigant prevails for purposes of awarding  
8 EAJA fees without a judicial judgement as long as the action has sufficient “judicial imprimatur.” Id.  
9 at 899.

10 The Supreme Court has defined the term “substantially justified” as “justified in substance or  
11 in the main-that is, justified to a degree that could satisfy a reasonable person.” Pierce v.  
12 Underwood, 487 U.S. 552, 565 (1988). To be substantially justified, the government must have “a  
13 reasonable basis both in fact and in law.” Id. at 568. The Ninth Circuit has held that the government  
14 must be substantially justified during both the underlying agency action and the litigation itself. Al-  
15 Harbi v. INS, 284 F.3d 1080, 1084-85 (9<sup>th</sup> Cir. 2002). Thus, the government must meet this  
16 threshold twice - once with regard to the underlying agency action, and then with regard to its  
17 litigation position in the proceedings arising from that action. See Kali v. Bowen, 854 F.2d 329, 332  
18 (9<sup>th</sup> Cir. 1988).

19 The party seeking fees must submit “an itemized statement ... stating the actual time  
20 expended and the rate at which fees and other expenses were computed.” 28 U.S.C. §  
21 2412(d)(1)(B). The appropriate number of hours includes all time “reasonably expended in pursuit  
22 of the ultimate result achieved.” Hensley v. Eckerhart, 461 U.S. 424, 431 (1983). However,  
23 “excessive, redundant, or otherwise unnecessary” hours should be excluded from the fee award. Id.  
24 at 434. Although the fee applicant bears the burden of documenting the appropriate hours expended,  
25 “the party opposing the fee application has a burden of rebuttal that requires submission of evidence

1 to the district court challenging the accuracy and reasonableness of the hours charged or the facts  
2 asserted by the prevailing party in its submitted affidavits.” Gates v. Deukmejian, 987 F.2d 1392,  
3 1397-98 (9<sup>th</sup> Cir. 1993).

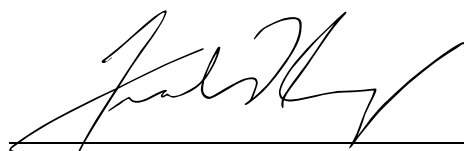
4 By Order dated July 15, 2008 this action was reversed and remanded to the Social Security  
5 Administration for further administrative proceedings. The Order is fully favorable to Plaintiff and  
6 materially advances his position. The Defendant’s position was not substantially justified as defined  
7 by the EAJA, and that there are no special circumstances that would make an award in this case  
8 unjust. Counsel for Plaintiff has filed his affidavit seeking attorney fees totaling \$5,550.23 based  
9 upon an expenditure of 33.1 hours of attorney's time and \$25.77 in expenses to maintain this action.  
10 The government has not claimed that the requested fee or expenses are inappropriate. The Court  
11 finds the requested fees and expenses to resolve this matter to be reasonable. Plaintiff has provided  
12 sufficient itemized statements of how the time was distributed.

13 ACCORDINGLY,

14 IT IS ORDERED:

15 Plaintiff’s motion for an award of costs and attorney’s fees [Dkt # 27] is **GRANTED**.  
16 Expenses in the amount of 25.77, and attorney’s fees in the amount of \$5,550.23 are awarded to  
17 Plaintiff’s counsel, Eitan Kassel Yanich.

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20 DATED this 5<sup>th</sup> of September, 2008.

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25 FRANKLIN D. BURGESS  
26 UNITED STATES DISTRICT JUDGE